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IN THE

Supreme Court of the United States

October Term, 1955
No. 310.

OLETA O'CONNOR YATES, HENRY STEINBERG, LORETTA STARVUS STACK, FRANK EFROIN SPECTOR, WILLIAM SCHNEIDERMAN, AL RICHMOND, ALBERT JASON LIMA, CARL RUDE LAMBERT, ROSE CHERNIN KUSNITZ, ERNEST OTTO FOX, BEN DOBBS, DOROTHY HEALY CONNELLY, PHILIP MARSHAL CONNELLY and FRANK CARLSON,

Petitioners,

vs.

UNITED STATES OF AMERICA.

Motion for Leave to File Brief Amici Curiae on Petition for Return of Certiorari and Brief.

CHARLES J. KATZ,
403 West Eighth Street,
Los Angeles 14, California,
Attorney for Amici Curiae.

ANTHONY V. RANDLES,
Of Counsel.

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Petitioners,

vs.

UNITED STATES OF AMERICA.

Motion for Leave to File Brief Amici Curiae on Petition for Return of Certiorari.

To the Honorable Chief Justice and the Associate Justices of the Supreme Court of the United States:

The petitioners,* all residents of the State of California and members of the Southern California-Arizona Conference of the Methodist Church, respectfully request leave to file the accompanying brief *Amici Curiae* on the petition for return of Certiorari now pending in the above-entitled cause.

*Names are set forth alphabetically in Appendix.

As citizens, we are deeply and profoundly concerned with the impact which the enforcement of the Smith Act, the first peace-time sedition statute in the United States, has had on the exercise of those fundamental freedoms upon which the security of the Nation depend.

As ministers, we have a special and direct interest in the rights guaranteed by the First Amendment of our Constitution. Any encroachment of the basic freedoms affects the freedom of religion which we believe is fundamental to the welfare of our Country and in which we are so vitally concerned.

We recognize the Court rule that permission to file such a brief should be requested from the Solicitor General of the United States. However, because of the lack of time to do this, and being familiar with the Solicitor General's interpretation of "the nature of the . . . interest" of the group requesting consent,* we are presenting this motion for leave to file our brief.

Wherefore, it is respectfully requested that this Honorable Court grant this motion to file the annexed brief as *Amici Curiae.*

CHARLES J. KATZ,
403 West Eighth Street,
Los Angeles 14, California,
Attorney.

ANTHONY V. RANDLES,
Of Counsel.

October 5, 1955.

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*Letter from Simon E. Sobeloff, Solicitor General, to Royal W. France, dated August 25, 1955.

IN THE

Supreme Court of the United States

October Term, 1955

No. .....

OLETA O'CONNOR YATES, HENRY STEINBERG, LORETTA STARVUS STACK, FRANK EFROIN SPECTOR, WILLIAM SCHNEIDERMAN, AL RICHMOND, ALBERT JASON LIMA, CARL RUDE LAMBERT, ROSE CHERNIN KUSNITZ, ERNEST OTTO FOX, BEN DOBBS, DOROTHY HEALY CONNELLY, PHILIP MARSHAL CONNELLY and FRANK CARLSON,

Petitioners,

vs.

UNITED STATES OF AMERICA.

Brief of Amici Curiae on Petition for Return of Certiorari.

The Smith Act has been one of the principal causes for the alarming flouting of civil liberties in the United States, and has engendered an atmosphere conducive to misunderstanding, indifference and violation of basic rights which has "tended to suppress conscientious non-conformity."* Since the statute is of indefinite duration,

*Hutchins, Report of the Fund for the Republic (1st Report, 1955) New York Times, August 22, 1955.

and since the Courts below appear to have extended the construction and application of the Act to lengths not heretofore countenanced by this Court, it would appear that review by this Court has become essential if prosecutions under the law are not to become so vagrant and at large as to substitute the arbitrary decisions of officialdom for the orderly exercise of constitutional powers. The dangers which lurk in the formal pronouncements of the Courts below, eliminating as they do all First Amendment considerations from Smith Act prosecutions, are too great to be disregarded by this Court.

The questions raised herein are of paramount national importance. Dr. Robert Hutchins, President of the Fund for the Republic, after noting the recent drastic departures "from those which have characterized Anglo-American jurisprudence," states:

> "America would be unrecognizable without freedom of speech, freedom of the press, freedom of religion, freedom of association and the freedom to differ; without due process of law and the equal protection of the laws; without the conviction that all men are created equal and are entitled to equality of opportunity."
>
> New York Times, August 22, 1955.

If America would be unrecognizable without the unfettered enjoyment of the freedoms guaranteed by the Constitution, even less so would its democratic institutions be understandable to the peoples of the world. In this area of relaxed international tensions, when an attempt is being made in a peaceful world atmosphere to foster a

true appreciation of American ideals, it would be anomalous and harmful for this Court to place its stamp of approval upon unconstitutional encroachments in the area of human rights.

> "It is correct to say that a people like ourselves with our traditions, our history, our habits, our attitudes, our institutions of democracy and freedom, our general enlightenment, must have freedom if we are to survive . . . Our responsibility here is immense. Upon us rests, to a large degree, the future of Western civilization and of Western Christendom. If we falter here, if by silencing inquiry and criticism we fall into serious error, the whole of civilization as we know it may go down with us. We must use all our resources and use them wisely. And of all our resources, the richest are in the minds and spirits of free men. These we must not fritter away."
>
> Henry Steele Commager, *Freedom, Loyalty, Dissent* (1954),

The importance of preserving intact our constitutional freedoms was recently emphasized in the address of Chief Justice Warren before the American Bar Association:

> "We, and other free countries, are endeavoring to demonstrate that freedom and dignity for all constitute the only sound basis for world peace.
>
> "In such a gigantic struggle, where the eyes of a critical world are constantly upon everyone, the power of example is far more forceful than that of precept.
>
> "If the world is made to see that the provisions of our Constitution guaranteeing human rights are

living things, enjoyed by all Americans, and enforceable in our courts everywhere, it will do much to turn the tide in our favor and therefore toward peace."

New York Times, August 25, 1955.

In the spirit of all the aforesaid, your petitioners respectfully petition this Court to review the convictions here "with the scrupulous care demanded by our Constitution."

Respectfully submitted,

CHARLES J. KATZ,
Attorney for Amici Curiae.

ANTHONY V. RANDLES,
Of Counsel.

APPENDIX.

Rev. Howard R. Carey
Emmanuel Methodist Church
Altadena, California

Rev. J. Maxwell Chamberlin
First Methodist Church
El Monte, California

Rev. Frank Crane
University Church
Los Angeles, California

Rev. Kenneth L. Danskin
First Methodist Church
Rosemead, California

Rev. G. Byron Deshler
Spurgeon Memorial Methodist Church
Santa Ana, California

Rev. Owen M. Geer
First Methodist Church
Long Beach, California

Dr. Gerald B. Harvey
Executive Secretary
Board of Education
Southern California-Arizona Conf.

Rev. Earl W. Isbell
Alondra Park Community Church
Los Angeles, California

Rev. Paul G. Jochinke
Puente Community Church
Puente, California

Rev. Arthur F. Kent
Wilmington-Avalon Methodist Church
Wilmington, California

Rev. Robert James Kersey
La Crescenta Valley Methodist Church
Montrose, California

Rev. Archie Matson
Broadway Methodist Church
Glendale, California

Rev. John Mixon
Executive Secretary
All Nations Foundation
Los Angeles, California

Rev. Edward N. Peck
Rosewood Methodist Church
Los Angeles, California

Rev. George E. Root
First Methodist Church
Ventura, California

Rev. Roger W. Sawyer
First Methodist Church of El Segundo
El Segundo, California

Rev. John R. Shaffer
University Methodist Church
Los Angeles, California

Rev. John L. Taylor
Torrance Methodist Church
Torrance, California

Rev. Norman W. Taylor
First Methodist Church
South Gate, California

Rev. Frank B. Toothaker
First Methodist Church
Redlands, California

Rev. Harlan Waite
Lincoln Avenue Methodist Church
Pasadena, California

Dr. George A. Warner
Retired Superintendent
Los Angeles District
Southern California-Arizona Conf.
Los Angeles, California

Rev. Kenneth Watson
Tujunga Community Methodist Church
Tujunga, California

Rev. L. L. White
Holman Methodist Church
Los Angeles, California